

Appl. No. : **10/629,315**
Filed : **July 28, 2003**

REMARKS

The Applicants have herein amended the specification to replace the term “plexiglass” with “PLEXIGLAS.” Claim 3 has been amended to replace “hydraulic nipple” and “hydraulic coupling” with “connector” and to replace “hydrostatic audio connection” with “waterproof audio connection.” These amendments are not being made for reasons related to patentability but rather to better specify what the Applicants view as their invention. Support for the amendments to Claim 3 may be found, for example, in paragraph 73 of the specification. Claim 5 has been amended to include an MP3 player and a cellular telephone in the list of the electronic devices recited in that claim. These amendments are not being made for reasons related to patentability but rather to better specify what the Applicants view as their invention. Support for the amendments to Claim 5 may be found, for example, in paragraph 67 of the specification. Claim 6 has been amended to replace “said audio device” with “said electronic device.” The previous recitation of an “audio” device was a typographical error. Claim 7 has been amended to indicate that the control mechanism and internal device are capable of rotational movement. These amendments are not being made for reasons related to patentability but rather to better specify what the Applicants view as their invention. Support for the amendments to Claim 7 may be found, for example, in paragraph 70 of the specification. Claim 12 has been amended to clarify that the waterproof enclosure is waterproof under submersible conditions and to remove the recitation of a scuba diver. Claim 15 has similarly been amended to remove the recitation of a diver. Claims 17 and 18 have been amended to replace “wireless receiver” with “wireless communication link.” These amendments are not being made for reasons related to patentability but rather to better specify what the Applicants view as their invention. Support for the amendments to Claims 17 and 18 may be found, for example, in paragraph 74 of the specification. Claims 19 and 20 have been amended to depend from Claim 12. These amendments are not being made for reasons related to patentability but rather to better specify what the Applicants view as their invention. New Claim 21 has been added, reciting that the wireless communications link comprises a receiver. Support for this claim may be found, for example, in paragraphs 77 and 81 in the specification. Claims 1-21 are pending in the application.

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The Applicants have carefully considered and addressed all of the Examiner's rejections and objections but respectfully submit that the pending claims are allowable for at least the reasons discussed below.

Objections to the Specification

The Examiner objected to the specification because the Examiner asserted that the term "plexiglass" should be spelled "PLEXIGLAS." As noted above, the Applicants have amended the specification accordingly to address the Examiner's objection.

Objection to Claim 6

The Examiner objected to Claim 6 because it recited "said audio device" without sufficient antecedent basis. The Applicants have amended Claim 6 to replace "audio" with "electronic." The now claimed "electronic device" has antecedent basis in Claim 1. Accordingly, the Applicants respectfully submit that they have adequately addressed the Examiner's objection.

Rejections under § 102

The Examiner rejected Claims 12-16 under 35 U.S.C. § 102(e) as being anticipated by Puthuff et al. (U.S. Patent No. 6,681,022). The Examiner argued that Puthuff discloses a waterproof audio headset comprising a speaker within a waterproof enclosure. With reference to Figures 1 and 5, Puthuff discloses a two-way communication earpiece that comprises a sound transducer (24) and a microphone assembly (34) disposed within an earpiece case (12). The sound transducer (24) is received into a rectangular housing (60) through an open end (58) in the rectangular housing (60). Column 4, lines 45-48. A sound transmission tube (28) is connected to housing (60). Column 4, lines 43-45. The sound transmission tube (28) is secured to a connector (30), which protrudes from earpiece case (12) and connects to sound delivery tube (14). Column 4, lines 63-67. The sound delivery tube (14) contains a trapezoidal connector (78) for connection to the earpiece case (12). Column 5, lines 5-6. The connector (78) provides a snap-fit connection that allows the sound delivery tube (14) to be easily replaced. Column 5, lines 13-16. The sound delivery tube (14) has a sound output opening (96) for providing sound to an ear. Column 5, lines 46-49. The microphone assembly (34) includes microphone suspension tubes (36 and 38). Column 6, lines 30-32. Protective membranes (42 and 44) may be positioned over the openings on microphone tubes (36 and 38). Column 6, lines 46-47. The

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protective membranes (42 and 44) reduce wind noise pickup and protect the microphone element (35) from water. Column 6, lines 49-50.

Claim 12 recites a submersible waterproof enclosure. Contrary to the Examiner's assertion, the Applicants respectfully submit that Puthuff does not disclose a submersible waterproof enclosure. Nowhere does Puthuff disclose that earpiece case (12) is waterproof. In fact, there are several locations on earpiece case (12) where water leakage could occur. For example, cable connector (48) interfaces with an opening in earpiece case (12). There is no indication of a waterproof seal between cable connector (48) and earpiece case (12). Similarly, connectors (30) and (78) interface with an opening in earpiece case (12). There is no disclosure in Puthuff of a waterproof seal between the connectors and the earpiece case. Indeed, connector (78) is disclosed as interfacing by an easily removed snap-fit. Finally, sound delivery tube (14) has a sound output opening (96), which would allow water to travel through the tube into rectangular housing (60) and contact sound transducer (24). Furthermore, Puthuff does not disclose a waterproof seal between opening (58) in the housing (60) and the sound transducer (24) to prevent leakage into the rest of the interior of earpiece case (12). The only mention in Puthuff of water resistance is that protective membranes (42 and 44) protect the microphone element (35) from water (presumably from rain). However, such membranes only protect the two openings in earpiece case (12) associated with the microphone assembly (34). There is no indication that other locations on earpiece case (12) are protected from water entry upon submersion of the entire device. Accordingly, the Applicants respectfully submit that Puthuff does not anticipate Claim 12 of the instant application. Similarly, dependent Claims 13-16 are not anticipated.

Rejections for Double Patenting

The Examiner rejected Claims 1, 2, and 4 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 7 of U.S. Patent No. 6,396,769. The Examiner also rejected Claims 1-11 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 4, 5, 8-10, 17, and 22-25 of U.S. Patent no. 6,414,722. The Applicants are submitting with this amendment a terminal disclaimer pursuant to 37 C.F.R. 1.321(b), that disclaims the terminal portion of any patent granted on this application extending beyond the expiration dates of U.S. Patent Nos. 6,396,769 and 6,414,722. Accordingly, the Examiner's rejections have been obviated.

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CONCLUSION

The Applicants respectfully submit that by the foregoing amendments and remarks they have overcome all rejections and objections and request a timely issuance of a Notice of Allowance.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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Dated: Sept. 22, 2004

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